IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 97 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BILAL SIDDIQUE SAMA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 97 of 2001

MR HM PARIKH for Petitioner No. 1-11

MR HH PATEL, PUBLIC PROSECUTOR for Respondent No. 1

MR KS JHAVERI for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/08/2001

ORAL JUDGEMENT

#. 451 cattle inclusive of cows, calves, oxen, etc. were seized in a vehicle in which they were carried allegedly for being slaughtered. Criminal case was

registered and the cattle were handed over to Panjrapole, Borsad for safe custody. Eleven persons applied for release of cattle in their favour and they sought their possession on the ground that they are owners of the same. None else came forward to claim ownership or possession over the seized cattle. Application of the revisionists was allowed by the Judicial Magistrate, Borsad on 1-12-2000 with three conditions and with direction for furnishing personal bond and surety bond, etc.

#. Feeling aggrieved with this order, the Trustees of Borsad Panjrapole filed a revision before the lower Court. The Additional Sessions Judge, Nadiad rejected the revision, but observed that the conditions imposed by the learned Magistrate require modification and as such, in addition to three conditions imposed by the Magistrate, the Additional Sessions Judge imposed eleven more conditions before release of cattle in favour of the revisionists. The revisionists felt aggrieved, as a result of which, the instant revision was filed.

#. Even in the third round, none appears for the respondent no.1 representing the Panjrapole. As such, Shri HM Parikh, learned counsel for the revisionists and Shri HH Patel, learned APP for the respondent no.1 have been heard.

#. Shri Parikh has argued that the instant revision has been filed only to a limited extent for quashing and setting aside the additional conditions imposed by the Additional Sessions Judge, Nadiad in the impugned judgment. His main contention has been, that once the Additional Sessions Judge found that the order of the Magistrate was not errorneous and the revision was to fail, then he had no jurisdiction to impose additional conditions. I, however, can not agree with Shri Parikh on this contention. Even, after rejecting the revision, the Additional Sessions Judge was empowered to impose more conditions in case he found that the conditions imposed by the trial Magistrate were not adequate for preventing further cruelty to the seized cattle and for their safe custody and also for their proper maintenance. To that extent, the ambiguity and infirmity in the conditions could be rectified by the revisional Court by adding more conditions, but that is not the case in the impugned order. Here, inasmuch as, eleven conditions have been imposed as additional conditions by the Additional Sessions Judge. All the conditions have been examined by me. Additional condition nos.3 and 8 are such which are already covered under condition nos.1 and

2 imposed by the trial Magistrate. However, certain further clarifications were ordered in these conditions, to which Shri Parikh has no objection. As such, these additional condition nos.3 and 8 can be added as additional condition nos.4 and 5 to the order passed by the learned Magistrate.

#. So far as condition no.6 is concerned, it has also to be quashed in view of the statement of Shri HM Parikh, learned counsel for the revisionist, that after getting possession of the cattle, the applicants shall move them on road and shall not carry them in vehicle, because they are shepherds and moving people and are unable to carry cattle in transport vehicle.

#. So far as condition nos.1,2,4,5,7,9,10 and 11 are concerned, these can not be justified by any reasoning whatsoever. Once, it was found by the Magistrate that the cattle could be released on furnishing a bond of Rs.6,25,000=00 and surety in the like amount, there was little reason for the Additional Sessions Judge to direct that the value of each cattle should be considered to be Rs.3,000=00 as against Rs.2,000=00 considered by the trial Magistrate. This exercise was arbitrary and without any evidence. Further, direction that the personal bond and surety shall be worked out at the rate of Rs.3,000=00 per cattle is also unwarranted. Likewise, the direction for depositing 40 per cent of the amount in cash in the lower Court is also unwarranted and is the result of excessive exercise of jurisdiction by the Additional Sessions Judge. Similar is the case with other conditions.

#. Consequently, the revision has to be partly allowed and is hereby partly allowed. The order of the Additional Sessions Judge rejecting the revision of the respondent no.2 is maintained. Condition nos.1,2,4,5,6,7,9,10 and 11 in the impugned judgment are set aside. Condition nos.3 and 8 of the impugned judgment shall be added as condition nos.4 and 5 to the order passed by the learned Magistrate.

August 16, 2001. (D.C. Srivastava, J.)

/sakkaf